In the High Court of Uttaranchal, at Nainital.
Writ Petition No. 538 (S/B) of 2003

1- Dr. Ajit Kumar S/o M.L. Lavenia R/o 1/100-C Lal Bagh, Pant Nagar, Distt. U.S. Nagar.

2- Dr. (Smt.) Renu Singh W/o Dr. A.K. Sharma R/o 35 Field Hostel Phool Bagh Pant Nagar District U.S. Nagar.

3- Dr. Chandra Dev, Research Associate, Department Of Agriculture Economics, Hill Campus G.B. Pant University, Ranichauri, District Tehri Garhwal.

4- Dr. Ujala Singh S/o Girwar Singh R/o Hill Campus Rani Chauri, District Tehri Garhwal.

5- Smt. Sunita Sharma, Research Associate, College of Home Science, G.B. Pant University Pant Nagar District U.S.Nagar

6- Smt. Poonam Tewari Research Associate, College Of Home Science, G.B. Pant University Pant Nagar District U.S.Nagar

7- Smt. Neera Agarwal Research Associate, College Of Home Science, G.B. Pant University Pant Nagar, District U.S. Nagar … Petitioners.

Versus

1- G.B. Pant University of Agriculture & Technology Pant Nagar, District U.S. Nagar, through its Registrar.

2- Vice Chancellor, G.B.Pant University of Agriculture & Technology Pant Nagar, District U.S. Nagar …… Respondents.

Sri L.P. Naithani, Senior Advocate, assisted by Sri B.D. Upadhyaya, Learned counsel for the petitioners.

Sri Rajendra Dobhal, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.
Dated: 17th May, 2006.

By way of this writ petition the petitioners have sought the following reliefs:-

(a) To issue a writ in the nature of certiorari quashing the order

dated 6-9-2003 passed by respondent No.2, Vice Chancellor, G.B. Pant University of Agriculture and Technology, Pant Nagar, contained in Annexure No.2 to the writ petition.

(b) To issue a writ in the nature of mandamus directing the respondents to place the petitioners in the U.G.C. pay scale of Rs. 8000-13,500 with effect from the date of their appointment

(c) To issue a writ in the nature of mandamus directing the respondents to prepare a scheme where under the petitioners who have put in long years as Research Associates on consolidated salary can be absorbed in a regular cadre of junior Research Officer or in any other corresponding cadre.

2- Brief facts giving rise to this writ petition are that the petitioners are working on the post of Research Associates in different departments of the University for the last several years. When a considerable period was expired they submitted various representations to the University for their absorption on the post of Junior Research Officer. No heed was paid on the representations filed by them as such they filed a W.P. No. 941(S/B) of 2001 before the this Court praying therein that the respondents be directed to place them in U.G.C. pay scale of Rs. 2200-4000 w.e.f. from the date of their appointment and absorb them on the posts of Junior Research Officers or any other corresponding posts. It was alleged that this Court vide order dated 18-6-2003 directed the respondents to decide the representation of the petitioners within two months keeping in view the various decisions passed by the Apex Court. Thereafter the respondent No.2 vide order dated 6-9-2003 rejected the representations of the petitioners. The said rejection order was challenged by filing amendment application in the said writ petition but the said amendment application was dismissed on 29-9-2003 as not maintainable. However liberty was given to the petitioners to file a fresh writ petition. Hence this writ petition was filed.

3- The petitioners further alleged that the petitioner No.1 was appointed on the post of Research Associate in the year 1986 whereas the petitioner No.2 was appointed on the post of Research associate in the year 1987 on a consolidated amount of Rs. 900/- per

month which was revised lateron with effect from 1.1.1986 as Rs. 1600/- per month and at present they are receiving consolidated amount of Rs. 11,500/- and Rs. 12000/- per month respectively. It was further alleged that again on 12-4-1988 the respondent University made an advertisement for appointment on the post of Research Associate for Hill Campus, Rani Chauri, District Tehri Garhwal. The petitioners 3 and 4 applied for the same and they were appointed on the post by appointment letters dated 23.6.1988 and 3-11-1988 respectively. The petitioners 5, 6 and 7 were appointed on 10-12-88, 9-11-92 and 26-12- 1992 respectively on a consolidated salary of Rs. 1600/- per month. It was also stated that in the advertisement it was mentioned that the appointment will be made temporarily for the period of two years or till the regular selected candidates join or till the sanction of the project which ever is earlier and the appointment can be terminated with one months notice on either side or payment of one months' salary in lieu of notice.

4- The petitioners alleged that in the year 1989 the University issued notices to all the Research Associates terminating their services with effect from the due date mentioned in the notice. Respondent Nos. 1 to 5 and other Research Associates filed writ petition before the Allahabad High Court in which interim order was passed in favour of the petitioners but later on the writ petition was dismissed as a result of which the services of all the Research Associates were terminated by the University on 14.5.1991. Being aggrieved the petitioners filed Special Leave Petitions before the Hon'ble Supreme Court which was disposed of on 26-7-1991 directing the respondents that all the three categories of people associated with the Research Programme should have employee co-terminus with the projects and in compliance of the aforesaid order the University vide its order dated 23-8-1991 continued the services of the petitioners. It was further alleged that the Board of Management in its meeting held on 12-12-1989 passed a resolution declaring Research Assistants of the University who were appointed on or prior to 1-4-1978 as Teachers of the university and designation of Research Assistant was changed as Junior Research Officer of the University and they were given pay scale of Rs. 700-1600.

However the said pay scale was given to those persons who were possessing post graduation degree in second division as prescribed by the U.G.C. They also alleged that they should be given U.G.C. pay scale of Rs. 8000-13,500. The grievance of the petitioners is that they are working as Research Associates whereas for a long service they should have been absorbed on the post of Junior Research Officers or in any other corresponding cadre. The petitioners also asserted in the writ petition that on the basis of judgment and order passed by Hon'ble Supreme Court in the case of Research Associate of the Rajasthan Agriculture University, reported in A.I.R. 1993 S.C. page 81 the petitioners should be absorbed in the pay scale of Rs. 2200-4000. It was also alleged that they preferred representations in the department but the same were rejected vide impugned order dated 6-9-2003.

5- The respondents filed counter affidavit stating therein that pursuant to the 1995 Scheme framed by the University, eligible writ petitioners had been given option that they could be absorbed as regular employees of the University on the post Technical Assistant in the pay scale of Rs. 5000-8000. They were not offered the post of Senior Technical Assistant in the pay scale of Rs. 5500-9000 as they did not have the qualification for Senior Technical Assistant positions then available. However, two of the writ petitioners declined this option to join the regular cadre. As per the 1995 Scheme such offer to joint the regular cadre was given on the basis of seniority as Teaching/Research/Extension Associates and as per the educational qualifications. It was also alleged by the respondents that petitioner No.1 made representation for absorption on the post of Junior Research Officer or equivalent posts while some of the petitioners such as petitioner No.4 requested for absorption in the regular cadre of Assistant Director/S.M.S./Assistant Professor in the pay scale of Rs. 2200-4000(present scale of Rs. 8000-13500) on the basis of their qualifications as well as their experience, but this fact does not entitle the petitioners to be absorbed in the regular cadre as Assistant Professor/J.R.O./S.M.S./Assistant Director or equivalent posts. The mode of appointment of these posts is as per All India Selection. At no point of time, University absorbed the employees to

the post of Assistant Professor/ J.R.O./S.M.S./Assistant Director from the ex-cadre posts for the reason that the mode of selection is All India Selection pursuant to All India Advertisement of the posts. However, pursuant to the 1995 scheme framed by the University the eligible petitioners had been given option that they could be absorbed as regular employees of the University on the post of Technical Assistant in the pay scale of Rs. 5000-8000, but two of the petitioners declined this option to join the regular cadre. It was also alleged that the Research Associates who were appointed on consolidated salary, have already been absorbed against the vacant position of Technical Assistant/Senior Technical Assistant as per the 1995 scheme, framed by the University. Regarding the judgment and order passed by the Hon'ble Supreme Court in the cadre of Research Associates of Rajasthan Agriculture University, the factual position had already been given in office order dated 6-9-2003 by which the representation of petitioners was rejected. Hence it was averred that the grounds taken in the writ petition have no legal substance and the writ petition is devoid of merits and as such the same is liable to be dismissed.

6- The petitioners filed rejoinder affidavit reiterating the facts mentioned in the writ petition.

7- We have heard the learned counsel for the parties and perused the record.

8- Record reveals that the petitioners were appointed as Research Associates and their appointment were made on a consolidated pay. The posts of Research Associates in the University are not cadre posts and all these appointments to the posts of Research Associates were made pursuant to advertisement issued in the local newspaper/notices issued by the department concerned having "limited circulation".

9- Now by way of this writ petition the absorption in regular cadre of Assistant Professors/Junior Research Officers or equivalent in the present scale of Rs. 8,000-13,500 is being sought by the petitioners. It is to be made clear that the post of Assistant Professor/Junior Research Officers are cadre posts and appointment to these posts is made on all India basis and such appointment

attracts U.G.C. pay scales. The job of Research Associates cannot be equated to the Assistant Professors.

10- The learned counsel for the petitioners has contended that the petitioners were appointed way back in 1986-88 as Research Associates and they have requisite qualification and some of the petitioners have now completed their Ph.D. But we do not find any substance in this argument as the above fact alone does not entitle the petitioners to be absorbed in a cadre post. It reveals from the counter affidavit that pursuant to the 1995 Scheme framed by the University, eligible petitioners had been given option that they could be absorbed as regular employees to the University in the post of Technical Assistant in the scale of Rs. 5000-8000. However two of the petitioners declined this option to join the regular cadre and other petitioners could not be offered regular cadre due to non-availability of such posts at that time.

11- It reveals from the record that at no point of time the University has absorbed employees to the post of Assistant Professor/Junior Research Officer from the ex-cadre posts for the reason that the mode of selection is All India Selection pursuant to All India advertisement of the posts.

12- Annexure-4 annexed alongwith the writ petition shows that the appointment of the petitioners was temporary for a period of two years or till the regularly selected candidate joins or till the tenure of sanction of project whichever is earlier. The appointment can be terminated with one month's notice on either side or payment of one month's pay in lieu of notice.

13- The Hon'ble Supreme Court in Appeal (Civil) No. 3595-3612 of 1999 Secretary State of Karnataka and others Vs. Uma Devi and others decided on 10-4-2006 has held as under:-

> *"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post*

could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

14- The Hon'ble Apex Court has further held that-

"One aspect needs to be clarified. There may be cases where appointments (not illegal appointments) as explained in S.V. NARAYANAPPA(supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India , the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

15- The five judges Bench of the Hon'ble Apex Court (supra) has further observed as under:-

"In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

16- In view of the decision of the Hon'ble Apex Court we are of the view that the petitioners cannot be absorbed as Junior Research Officer or equivalent.

17- We do not find any ground to issue the writ or directions as prayed by the petitioners.

18- The writ petition lacks merit and is liable to be dismissed.

19- Accordingly the writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB

WPSB 538/2003

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

(CLMA 133/2006- Review Application)

Heard Sri B.D. Upadhyaya, learned counsel for the review petitioners and Sri Rajendra Dobhal, learned counsel for the respondents.

The petitioners have sought review of judgment of this court dated 17-5-2006. We have perused the judgment and the review petition. We do not find that any of ground enumerated under Order 47 Rule 1 C.P.C. is attracted in this review petition

Therefore, the review petition is devoid of merit and is hereby dismissed.

(B.C.K., J) **(P.C. V. J.)**

16-06-2006

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